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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/871,961      | 06/04/2001  | Puranam U. Sarma     | 2761-0147P          | 5257             |

2292 7590 06/17/2003

BIRCH STEWART KOLASCH & BIRCH  
PO BOX 747  
FALLS CHURCH, VA 22040-0747

EXAMINER

CLOW, LORI A

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1631

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DATE MAILED: 06/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/871,961

Applicant(s)

SARMA ET AL.

Examiner

Lori A. Clow, Ph.D.

Art Unit

1631

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 May 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  
2. ☐ The proposed amendment(s) will not be entered because:  
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ they raise the issue of new matter (see Note below);  
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 42,43,48-57 and 59.

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 35-41.

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.  
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.  
10. ☐ Other: \_\_\_\_\_

*Marianne P. Allen*  
MARIANNE P. ALLEN  
PRIMARY EXAMINER  
GROUP 1800

AU 1631

Continuation of 5. does NOT place the application in condition for allowance because: the declaration has been carefully reviewed; however, it is not fully persuasive. The declaration is not commensurate in scope with the claims. While it is agreed that one could have practiced the method without undue experimentation for those embodiments where the antibody bound to the epitopes defined by SEQ ID Nos 1-6, the claims are not so limited. Note the use of "comprising" language regarding the identity of the peptide and the lack of limitations concerning what epitope must the antibodies bind. That is, the claims embrace methods of diagnosing via unidentified epitopes. Note that the claims embrace any peptide containing the recited subsequences, even if they are unrelated to aspergillosis. The declaration submitted 22 May 2003 is objected to for containing handwritten insertions in the text without signature and date of correction.

This application contains claims 44-47, 58, 60, and 61 drawn to inventions that are independent and distinct from the invention originally claimed. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01. Originally filed claims 16 and 17, for example, were drawn to methods and not kits, as applicant has proposed.

*Li A. Clau*  
AU 1631

*Marianne P. Allen*  
MARIANNE P. ALLEN  
PRIMARY EXAMINER  
—GROUP 1800  
AU 1631